



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

750 - AUDIO-VIDEO RECORDED INTERVIEWS/INTERROGATIONS

GENERAL ORDER: 2014-90
ISSUED: July 28, 2014

EFFECTIVE: July 28, 2014

REVIEWED/APPROVED BY:

Captain Regina Howard

DATE: July 15, 2014

ACTION: Amendment to General Order 2012-10 (March 12, 2012)

WILEAG STANDARD(S): 1.7.2, 6.3.6, 6.6.4

750.00 PURPOSE (WILEAG 1.7.2)

The purpose of this policy is to establish clear guidelines on use of the digital audio- video recording system for recording custodial interrogations and forensic interviews and the associated use, management, storage and retrieval of such recordings. In addition, this policy is to assure compliance with all applicable constitutional requirements as they relate to interviews, interrogations and access to counsel.

750.05 POLICY

The use of audio-video recordings during custodial interrogations or forensic interviews is intended to enhance the investigative process and assist in the prosecution of criminal cases. The recording of custodial interrogations will assist the department in demonstrating the interrogation process, preserving the statements of the accused, and defending against claims, such as deprivation of the right to counsel and the right against self-incrimination.

This policy applies only to custodial interrogations or forensic interviews that are conducted in a department facility.

750.10 DEFINITIONS

A. CUSTODIAL INTERROGATION

An interrogation by a law enforcement officer of a person suspected of committing a crime from the time the suspect is or should be informed of his or her rights to counsel and to remain silent until the questioning ends, during which the officer asks a question that is reasonably likely to elicit an incriminating response and during which a reasonable person in the suspect's position would believe that he or she is in custody or otherwise deprived of his or her freedom of action in any significant way.

B. FORENSIC INTERVIEW

A video recorded interview of a child victim or witness that is conducted by a trained forensic interviewer.

C. RECORDED INTERVIEW / INTERROGATION ROOM

Any designated room within a department facility that is equipped with audio-video

recording equipment.

D. RECAP INTERVIEW / INTERROGATION

When statements and admissions are initially made outside the presence of electronic recording equipment, members shall conduct an interview/interrogation in a recording room in order to summarize the previous statements of the subject.

750.15 PROCEDURES (WILEAG 6.3.6, 6.6.4)

A. ELECTRONIC RECORDING REQUIRED

Members shall use the digital audio-video recording system to record custodial interrogations or forensic interviews when any of the following conditions exist:

1. An adult (17 years of age or older) in custody for a felony or a misdemeanor.
2. Juveniles (under 17 years of age) shall be interviewed/interrogated regarding either a felony or misdemeanor.
(WILEAG 6.6.4.1)
3. If accommodations are available, contact with a parent or guardian during a juvenile custodial interrogation shall be at the discretion of the member.
(WILEAG 6.6.4.2)
4. Limit the number of persons present during the interview/interrogation. The duration of the interview/interrogation will be dependent upon the seriousness of the offense and the person's cognitive ability to participate in the interrogation process.
(WILEAG 6.6.4.3)
5. When a trained member of the department conducts a forensic interview, it shall be conducted in a location designated by the commander of the Sensitive Crimes Division.

B. EXCEPTIONS TO THE RECORDING REQUIREMENT:

1. System is unavailable – instances where the digital audio-video recording system is unavailable (e.g., equipment malfunctions, power outage);
2. Spontaneous statements – statements not made in response to police questioning;
3. Routine booking questions – statements made in response to questions that are routinely asked during the arrest and booking process;
4. Statements not required to be recorded initially – statements made in accordance with this procedure that are not required to be recorded, but are later determined to be an offense that would have required a recorded interrogation;

5. Statements made during a custodial interrogation at another location – this includes out of state, a correctional facility, hospital, which is not equipped with recording equipment, and the reasons for using such other location is not to circumvent this policy.
 6. Suspect requests interrogation not be recorded – statements by a subject who has indicated that he/she will only participate in the interrogation if it is not recorded; or
 7. Error – the failure to record was due to inadvertent error or oversight and was not the result of intentional conduct of a member.
 8. Exigent circumstances – when information is needed immediately to ensure that further danger to the public does not result.
- C. Members conducting an interrogation, but not using the audio video system under the above exceptions should make every reasonable effort to use an audio recorder to capture the statement.
- D. The member(s) conducting or assisting with the interview/interrogation shall be responsible for the operation of the recording device used during the interview and will monitor to ensure that the recording is not interrupted. The member accessing the digital audio-video recording system must log into the system using their authorized user name and password.
- E. Officer discretion - members are encouraged to conduct interviews and interrogations at the time when they believe the circumstances are opportune for eliciting information from a subject. This policy is not intended to discourage field interrogations (e.g., at hospitals, jails, police vehicles, other locations where recording is not practicable). In the event statements and admissions are developed outside of the recording room(s), when feasible, members should continue to conduct the interrogation in a recording room for the purposes of a recap interrogation as defined herein.
- F. Recording in entirety - to maximize the effectiveness of electronic recording and the integrity of audio-video documentation, members shall adhere to the following:
1. Interviews/interrogations shall be recorded in its entirety.
 2. The recording shall begin before the person is read their Miranda warnings.
 3. During short periods when the interview is interrupted, such as when the person needs to use the restroom, the recording should continue.
 4. At the conclusion of the interview/interrogation, the member/s conducting the interview shall deactivate the recording equipment immediately upon the exit of parties from the interview room.

Note: Nothing in this policy prohibits the use of electronic recording equipment for any other interview/interrogation at the discretion of the

member.

750.20 INTERVIEW / INTERROGATION (WILEAG 6.3.6)

A. INTERVIEW / INTERROGATION PREPARATIONS

1. Ensure that the person being interviewed/interrogated is positioned in a way that their voice will be audible on the recording.
2. Members should ensure that questions and statements that are inaudible are repeated or clarified during the recorded interview/interrogation.

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3. Attorney consultations - the recording shall be continuous and uninterrupted during the interview/interrogation process, unless the person interviewed/interrogated and their attorney elects to confer privately. In such cases, the member responsible for the recording shall advise the attorney of the use of recording equipment, and offer: to deactivate the audio, provide an alternate room for the conference, or to turn off the recording equipment during the conference between the attorney and the subject. If there is an interruption in the recording in order to accommodate the subject and attorney, note the date and time prior to stopping the equipment and re-state the date and time when the equipment is again turned on.
4. Eavesdropping – at no time will the system be used to record the conversation of another member(s) without the consent of all parties. This does not prohibit another member of the department from monitoring interviews/interrogations conducted in accordance with this SOP.
5. If the person interrogated has previously indicated they wished to have an attorney present, but later request to make a statement without an attorney, the member conducting the interrogation should confirm this during the recorded interrogation.

B. POST INTERVIEW / INTERROGATION

The member(s) conducting the interview/interrogation should:

1. Transfer the recording only to new and unused DVD's. Storage, either directly or indirectly to other medium such as flash drives, external hard drives, etc., is strictly forbidden.
2. DVD's of the interrogation can be created and provided only to the prosecutor and/or the defense attorney as part of the discovery process or to an outside law enforcement agency with the approval of a supervisor.

3. Rewritable discs – the department will not use rewritable discs for dissemination.
4. Written statement required – in all audio-video recorded interviews/interrogations, the member conducting the interview/interrogation shall submit a supplemental incident report, which summarizes the interrogation. This supplemental report shall include:
 - a. The date and time the interview began.
 - b. The location of the interview.
 - c. The names of all individuals present.
 - d. A synopsis of the statement provided, to include documentation that the person remained silent, asked not to make a statement, or requested an attorney.
 - e. The time and duration of all breaks or interruptions, such as to use the restroom or eat,
 - f. The date and time the interview/interrogation concluded.

750.25 EVIDENCE AND EQUIPMENT

A. PRESERVATION OF EVIDENCE AND DISCOVERY REQUESTS

1. No person shall alter the original electronic recording media.
2. All data and media associated with the recorded interview/interrogation are the property of the Milwaukee Police Department and dissemination outside of the department or prosecutor's office is prohibited unless specifically authorized by a captain or above or Open Records.
3. Requests for copies of recordings other than those provided to the prosecutor or defense counsel must be made through Open Records.
4. Retention: recordings of interviews/interrogations are considered evidence and shall be handled and retained in accordance with SOP 560-Property.
5. Members who are not involved with the case, but wish to view a recorded interview/interrogation must submit a request in the form of a *Department Memorandum* (form PM-9E) to their commanding officer for approval.
6. Members seeking to view and/or use electronic recordings for training purposes must submit a request in the form of a *Department Memorandum* (form PM-9E) to their commanding officer for approval.

B. MAINTENANCE OF EQUIPMENT

1. The Information Systems Division shall be responsible for maintaining the electronic recording equipment. Each respective work location will ensure that there is an adequate supply of DVDs available at all times.
2. In the event the equipment requires service or repair, promptly notify the

Information Systems Division Help Desk.

A handwritten signature in black ink, reading "Edward A. Flynn". The signature is fluid and cursive, with the first name "Edward" and last name "Flynn" clearly legible.

EDWARD A. FLYNN
CHIEF OF POLICE

EAF:lmg